

## **REMARKS**

The Office Action dated October 9, 2008 has been received and carefully noted. The above amendments and the following remarks are being submitted as a full and complete response thereto.

Claims 1-4 and 7 were rejected. Claims 1-2, 4, and 7 have been amended herein. Thus, Claims 1-4 and 7 are pending in this application. Support for the amendments may be found in the specification as originally filed, at least at page 9, line 24 to page 10, line 11. The Applicants submit that no new matter has been added. The Applicants respectfully request reconsideration and withdrawal of the outstanding objections and rejections.

### ***Information Disclosure Statement***

An Information Disclosure Statement and Form PTO/SB/08a that include the cited references with the required fees are filed concurrently herewith. The Applicants respectfully request consideration of the references cited on the attached Form PTO/SB/08a.

### ***Objection to the Declaration***

The Declaration was objected to as allegedly being unsigned. The Applicants submit that the Declaration submitted on April 28, 2006 was properly signed, and therefore respectfully request that this objection be withdrawn.

### ***Rejection under 35 U.S.C. §112***

Claim 1 is rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite because there was insufficient antecedent basis for the term “fruit pulp” in part (v) of claim 1. Without conceding the propriety of this rejection, the Applicants submit that claim 1 has been amended to clarify the claimed subject matter. The Applicants therefore respectfully request withdrawal of the §112 rejection of Claim 1.

### ***Rejection under 35 U.S.C. §103***

Claims 1-4 and 7 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Janda et al. (U.S. Patent No. 5,731,018, hereinafter “Janda”) in view of Mouri et al. (U.S. Patent No. 4,275,648, hereinafter “Mouri”). To the extent that the rejection remains applicable to the claims as amended, the Applicants respectfully traverse this rejection.

Janda is cited for disclosing a process for preparing fruit spread, wherein the process does not include the addition of sugar, sweeteners, pectin, or gums.

The Applicants submit that Janda, as cited, discloses a method for preparing a concentrate that differs from the presently-claimed invention in at least several respects. First, Janda, as cited, emphasizes the clarity of the concentrate, which has a light extinction coefficient of  $< 0.068$  at 720 nm. Second, the process of Janda, as cited, is used to produce a de-aromatized concentrate, while in the presently-claimed process the fruit concentrate retains the aroma of the tropical fruits used, even in the final spread. Third, the process described in Janda, as cited, requires the use of enzymes

twice during different stages. Fourth, the process of Janda, as cited, involves 2 hours of stirring, with aeration, in order for the enzymatic activity to occur.

Mouri is cited for disclosing a method for producing strained fruit juice.

The Applicants submit that Mouri, as cited, discloses a method of concentrating fruit juices, and differs from the presently-claimed invention in at least several respects. First, Mouri, as cited, uses enzyme liquefaction of crushed whole fruit, which has limitations when used in connection with fruits like Jackfruit, banana, cashew apple, etc. Second, as water is added during the crushing step of Mouri, as cited, the resulting juice is diluted to that extent which is then subjected to concentration, which consumes energy. Third, Mouri, as cited, boils the fruit for 3-20 minutes prior to crushing, in order to reduce enzyme activity.

The Office Action takes the position that one of ordinary skill in the art at the time the invention was made would have been motivated to combine the method for producing a fruit concentrate of Janda, with the method of preparing a fruit juice by raising of the pulp temperature prior to cooling and filtering as disclosed in Mouri, because the increase in temperature deactivates the enzymes (Mouri column 2, lines 54-60), thereby stopping decomposition reactions. The Office Action further takes the position that it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the enzyme activities, quantities of enzyme used, and processing temperatures, in order to arrive at the presently-claimed invention, citing *In re Boesch*, 617 F. 2d 272, 205 U.S.P.Q. 215 (CCPA 1980).

However, Applicants respectfully disagree with the positions taken in the Office Action. Applicants submit that the combination of Janda and Mouri fails to disclose or suggest at least the combination of parts (v) and (vi) of claim 1 as amended.

In part (v), a second fruit pulp is prepared by crushing fruits and incubating the second fruit pulp with 0.75-1.25% pectolytic enzymes at 27-40°C for a period of 20-40 minutes to reduce the viscosity of the fruit pulp by 30-50%. In part (vi), 20 to 30% of the fruit juice concentrate obtained in part (iv) is combined with the fruit pulp of part (v) in order to obtain a mixture having total soluble solids content from 30-45°Brix, followed by boiling the mixture to obtain a fruit spread of 68-70° Brix.

Neither of Janda or Mouri discloses or suggests combining the claimed second fruit pulp having reduced viscosity with the claimed fruit juice concentrate, followed by boiling, in order to obtain the presently-claimed fruit spread, as claimed in amended claim 1. Thus, the Applicants respectfully submit that claim 1 is allowable over the cited art. As claims 2-4 and 7 depend from allowable claim 1, the Applicants submit that these claims are likewise allowable.

For at least the above reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-4 and 7 under 35 U.S.C. §103(a) over Janda in view of Mouri.

### **CONCLUSION**

Applicants respectfully submit that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the

Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event that this paper is not being timely filed, the Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account Number 01-2300, referencing Docket Number 027927-00002.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dawn C. Russell".

Dawn C. Russell  
Registration Number 44,751

Customer Number 004372  
ARENT FOX LLP  
1050 Connecticut Avenue, NW  
Suite 400  
Washington, DC 20036-5339  
Telephone: 202-857-6000  
Fax: 202-638-4810

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